

TRIPURA GAZETTE



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PART--I-- Orders and Notifications by the Government of Tripura,
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**GOVERNMENT OF TRIPURA
FINANCE DEPARTMENT
(TAXES & EXCISE)**

NO.F.1-7(33)-TAX/2023

Dated, Agartala, the 18th November, 2023.

NOTIFICATION

**SUBJECT: STANDARD OPERATING PROCEDURE FOR TREATMENT OF
WORKS CONTRACT RELATED ISSUES DURING TRANSITION
FROM VALUE ADDED TAX (VAT) TO GOODS AND SERVICES
TAX (GST).**

Goods and Services Tax (GST) was rolled out throughout the Country on 1st July, 2017. Under the GST Law both the State and Central Government have been empowered to levy tax simultaneously against supply of goods and / or services for intra-state supply – Central Goods and Services Tax (CGST) by the Central Government and State Goods Services Tax (SGST) by the State Government. In case of inter-state supply only the Central Government is empowered to levy Integrated Goods and Services Tax (IGST).

Works Contract has been defined under sub-section (36) of Section 2 of the Tripura Value Added Tax Act, 2004 which is as under:

“(36) “Works Contract” means any agreement for carrying out for cash or deferred payment or other valuable consideration –

(i) the construction, fitting out, improvement or repair of any building, road, bridge or other immovable property, or

(ii) the installation or repair of any machinery affixed to a building or other immovable property, or

(iii) the overhaul or repair of-

(a) any motor vehicle,

(b) any vessel propelled by internal combustion engine or by any other mechanical means,

(c) any aircraft,

(d) any component or accessory or part of any of the items mentioned in paragraph (a) to (c) above,

(iv) the altering, ornamenting, finishing, improving or otherwise processing or adopting of any goods.”

Works Contract has also been defined in sub-section (119) of Section 2 of the Tripura State Goods and Services Tax Act, 2017 is as under:

“(10) “appointed day” means the date on which the provisions of this Act shall come into force;

(119) “works contract”. means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;”

Under the TSGST Act, 2017 works contract as defined in sub-section (119) of Section 2 is treated as supply of services in Para-6(a) of Schedule-II of the GST Law.

During Value Added Tax (VAT) regime the State Government was empowered to levy tax only against supply of goods while the Central Government was empowered to levy tax against supply of services only. To determine the tax liability of a dealer during VAT regime under the TVAT Act, 2004 the guiding principle was the judgment and order passed by the Hon'ble Supreme Court on 17.11.1992 in Case No.: Appeal (Civil) 4861-64 of 1992 (Gannon Dunkerley & Co. vs. State of Rajasthan) wherein it was held that the value of the goods involved in the execution of a works contract will have to be determined taking into account the value of the entire works contract and deducting therefrom the charges towards labour and services which would cover:

(1) Labour charges for execution of the works;

- (2)** Amount paid to a sub-contract for labour and services;
- (3)** Charges for planning, designing and architect's fees;
- (4)** Charges for obtaining on hire or otherwise machinery and tools used for the execution of the works contract;
- (5)** Cost of consumables such as water, electricity, fuel etc. used in the execution of the works contract the property in which is not transferred in the course of execution of a works contract; and
- (6)** Cost of establishment of the contractor to the extent it is relatable to supply of labour and services;
- (7)** Other similar expenses relatable to supply of labour and services;
- (8)** Profit earned by the contractor to the extent it is relatable to supply of labour and services.

During VAT regime the rate of tax was 5% and 14.5%. The rate of Tax Deducted at Source (TDS) was 8% as per Notification No.F.1-1(43)/TAX/2005(P-I) dated 1st August, 2012 published in the Tripura Gazette vide No. 180 dated 1st August, 2012.

During VAT regime the facility for utilization of Input Tax Credit (ITC) was limited only for intra-state B2B transactions. However, in GST the taxpayer can avail the benefits of seamless ITC both for intra-state and inter-state B2B transactions.

Transitional arrangement for ITC is mentioned in Section 140 of the TSGST Act,2017 wherein it is mentioned that a registered person other than a composite taxpayer shall be entitled to take in his electronic credit ledger, credit of the amount of Value Added Tax, the amount of Central Value Added Tax Credit (of eligible duties), if any, carried forward in the return relating to the period ending with the day immediately preceding the appointed day furnished by him under the existing law in such manner as may be prescribed. The operative portion of the said section relevant for works contract is as follows:

"140. (1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the amount of Value Added Tax, if any, carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit in the following circumstances, namely: –

- (i) where the said amount of credit is not admissible as input tax credit under this Act; or*
- (ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date:*

Provided further that so much of the said credit as is attributable to any claim related to section 3, sub-section (3) of section 5, section 6, section 6A or sub-section (8) of section 8 of the Central Sales Tax Act, 1956 which is not substantiated in the manner, and within the period, prescribed in rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 shall not be eligible to be credited to the electronic credit ledger:

Provided also that an amount equivalent to the credit specified in the second proviso shall be refunded under the existing law when the said claims are substantiated in the manner prescribed in rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957.

(2) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed input tax credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as input tax credit under the existing law and is also admissible as input tax credit under this Act.

Explanation.—For the purposes of this section, the expression “unavailed input tax credit” means the amount that remains after subtracting the amount of input tax credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of input tax credit to which the said person was entitled in respect of the said capital goods under the existing law.

(3) A registered person, who was not liable to be registered under the existing law or who was engaged in the sale of exempted goods or tax free goods, by whatever name called, or goods which have suffered tax at the first point of their sale in the State and the subsequent sales of which are not subject to tax in the State under the existing law but which are liable to tax under this Act or where the person was entitled to the credit of input tax at the time of sale of goods, if any, shall be entitled to take, in his electronic credit ledger, credit of the value added tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions namely:—

- (i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;*
- (ii) the said registered person is eligible for input tax credit on such inputs under this Act;*
- (iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of tax under the existing law in respect of such inputs; and*
- (iv) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day:*

Provided that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of tax in respect of inputs, then, such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.

(4) A registered person, who was engaged in the sale of taxable goods as well as exempted goods or tax free goods, by whatever name called, under the existing law but which are liable to tax under this Act, shall be entitled to take, in his electronic credit ledger,-

(a) the amount of credit of the value added tax, if any, carried forward in a return furnished under the existing law by him in accordance with the provisions of sub-section (1); and

(b) the amount of credit of the value added tax, if any, in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to such exempted goods or tax free goods, by whatever name called, in accordance with the provisions of sub-section (3).

(5) A registered person shall be entitled to take, in his electronic credit ledger, credit of value added tax, if any, in respect of inputs received on or after the appointed day but the tax in respect of which has been paid by the supplier under the existing law, subject to the condition that the invoice or any other tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day:

Provided that the period of thirty days may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding thirty days:

Provided further that the said registered person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under this sub-section.

.....”

Sub-Sections (10) & (11) of Section 142 of the TSGST, Act, 2017 is copied herein below :

“(10) Save as otherwise provided in this Chapter, the goods or services or both supplied on or after the appointed day in pursuance of a contract

entered into prior to the appointed day shall be liable to tax under the provisions of this Act.

(11) (a) notwithstanding anything contained in section 12, no tax shall be payable on goods under this Act to the extent the tax was leviable on the said goods under the Tripura Value Added Tax Act, 2004;

(b) notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994;

(c) where tax was paid on any supply, both under the Tripura Value Added Tax Act, 2004 and under Chapter V of the Finance Act, 1994, tax shall be leviable under this Act and the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed."

Transitional provisions as applicable for tax deduction at source is mentioned in Section 142(13) of the TSGST Act, 2017 which is as follows:

"(13) Where a supplier has made any sale of goods in respect of which tax was required to be deducted at source under the Tripura Value Added Tax Act, 2004 and has also issued an invoice for the same before the appointed day, no deduction of tax at source under section 51 shall be made by the deductor under the said section where payment to the said supplier is made on or after the appointed day."

Through introduction of the Tripura State Goods and Services Tax Act, 2017 (TSGST Act, 2017) the Tripura Value Added Tax Act, 2004 (TVAT Act, 2004) except in respect of goods included in the entry 54 of the State list was repealed as mentioned in Section 174(1) of the TSGST Act, 2017.

The TDS provisions under the TSGST Act, 2017 came into force w.e.f. 1st October, 2018. Thus, any DDO is required to deduct tax at source under the GST Law for an invoice issued on or after 1st July, 2017 only.

Under the VAT regime there was no separate rate of tax for works contract.

Under the GST regime the rate of GST on works contract for Government works was notified at 18% vide Rate Notification No. 11/2017. However, the rate of GST on works contract for Government works was reduced to 12% vide Rate Notification No. 20/2017.

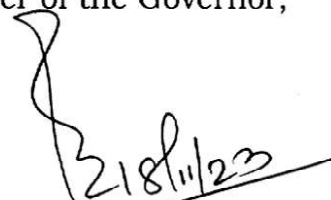
Rate of GST on works contract services provided to Government authorities and Government entity was notified @ 18% vide Rate Notification No. 22/2021 which came into force w.e.f 01.01.2022.

Rate of GST on works contract services provided to the Central Government, State Government and local authorities was notified at 18% vide Rate Notification No. 03/2022 which came into force w.e.f. 18.07.2022.

INCIDENCE OF APPLICABLE TAXES OF SERVICE TAX / VAT / GST

Sr. No.	Completion of work contract	Invoice Date	Payment Date	Applicability of Taxes			Applicable TDS
				Service Tax	VAT on Material used	GST	
1	Up to 30.06.2017	Up to 30.06.2017	Up to 30.06.2017	Yes	Yes	No	VAT TDS
2	Up to 30.06.2017	Up to 30.06.2017	After 30.06.2017	Yes	Yes	No	VAT TDS
3	Up to 30.06.2017	After 30.06.2017	After 30.06.2017	No	No	Yes	GST TDS *
4	From 01.07.2017	From 01.07.2017	From 01.07.2017	No	No	Yes	GST TDS *
* TDS under GST is made applicable w.e.f. 01.10.2018. Provision of TDS was not applicable between 01.07.2017 to 30.09.2018							

By Order of the Governor,



(Rakhi Biswas, TCS-SSG)
Ex-Officio Additional Secretary
Finance Department
Government of Tripura